

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA
ERIE

Cesar Mendoza-Hernandez)	
Plaintiff,)	Civil Action
)	#04-204E
V.)	
)	<u>JURY TRIAL DEMAND</u>
James F. Sherman,)	
Warden, FCI McKean,)	Honorable:
Defendant.)	Susan Paradise Baxter,
)	U.S. Magistrate Judge
)	Western District of PA.

MOTION BY: PLAINTIFF: Cesar Mendoza-Hernandez, TO ENLARGE TIME TO FILE HIS RESPONSE IN OPPOSITION TO MOTION TO DISMISS & OR IN THE ALTERNATIVE IN OPPOSITION TO SUMMARY JUDGMENT VIA: FEDERAL RULES OF CIVIL PROCEDURE 56, THIS MOTION TO EXTEND TIME IS VIA: FEDERAL RULES OF CIVIL PROCEDURE RULE 6(b), FOR A PERIOD OF TWENTY DAYS UNTIL: JULY 20, 2005, BECAUSE FCI McKean's COPY MACHINE WAS NOT IN SERVICE FOR OVER TWO (2) WEEKS & FCI McKean, HAS ONLY SIX OR SEVEN NOT COMPLETELY FUNCTIONABLE TYPEWRITERS, THIS REQUEST IS FOR EXTENTION OF TIME IS ALSO IN THE INTEREST OF JUSTICE

COMES NOW, Plaintiff: Cesar Mendoza-Hernandez, (herein-after referred to as 'Plaintiff') Pro Per In Propria Persona Proceeding Sui Juris, hereby petitions this Honorable Court for an Extention of time to file his response to defendants motion to dismiss & or pursuant to: summary judgment via (Federal Rules of Civil Procedure Rule 56, hereinafter referred to as 'FRCP 56') time extention for twenty (20) days, until July 20, 2005.

Affidavit of Cesar Mendoza-Hernandez

I, Cesar Mendoza-Hernandez, hereby state the following under Title 18 U.S.C. §1623, under the pains & penalties of perjury, & under: Title 28 U.S.C. §1746, the following to be true, correct & complete, I state as follows:

1. FCI McKean's copying machine, has been out of service for over two (2) weeks, & was just repaired on: July 14, 2005, Thursday afternoon 2:30 P.M..

2. FCI McKean's Law Library has 'Only' six or seven not completely functionable typewriters for a prison population of over fourteen hundred (1400) inmates, creating a extremely 'hostile' environment for those inmates whom wish to use the typewriters to exercise their Due Process, Access To The Courts & Equal Protection Of The Law, thus, prejudicial to the Plaintiff.

3. Plaintiff's motion in opposition to defendants motion to dismiss & or in the alternative for summary judgment via: 'FRCP 56' was due on July 1, 2005, but because of extenuating circumstances out of the direct control of Plaintiff, Plaintiff request a twenty (20) day extention of time until July 20, 2005, to file his Motion in opposition, supra. See Supreme Court of the United States Case Law Authority in: Chambers v. Baltimore and Ohio R.R. Co., 28 S.Ct. 34, 35 (1907) (The right of access to the Courts is a fundamental right protected by the Constitution.) McNabb v. United States, 318 U.S. 332, 347 (1943) ("The history of liberty has largely been the history of observance of procedural safeguards.") McClesky v. Zant, 499 U.S. 467, 111 S.Ct. 1454, 113 L.Ed.2d 517, 567-68 (1991) ("Obviously, respect for the rule of law must start with those who are responsible for pronouncing the law," (Federal Bureau of Prisons).)

4. Since I am over the Deadline date of July 1, 2005, to respond, this Court may grant an extention of time filed after the deadline if the Motion to enlarge time shows proof of good cause and shows that failure to act was the result of excusable neglect of the Federal Bureau of Prisons: FCI McKean's Law Library Staff: Mr. Christopher Strade's inability to fix the Copy Machine sooner than over two weeks & to provide 1400 inmates with access to at-least----Twenty (20) functionable typewriters, instead of six or seven non-functionable typewriters. See: Federal Rules of Civil Procedure Rule 6(b)(2); Donald v. Cook City Sheriff's Dept., 95 F.3d 548, 558 (7th Cir.1996). In determining whether there is excusable neglect, the Court should consider all of the following:

- (1) the prejudice to the nonmovant;
- (2) the length of the delay & its potential impact on the Judicial proceedings;
- (3) the reason for the delay & whether it was within the reasonable control of the movant, and;
- (4) whether the movant acted in good faith. See: Pioneer Inv. Servs. Co. v. Brunswick Assocs., 507 U.S. 380, 395, 113 S.Ct. 1489, 1498 (1993); MCI Telecomm. Corp. v. Teleconcepts, Inc., 71 F.3d 1086, 1097 (3rd Cir.1995).

WHEREFORE, for all of the above stated reasons with supportive case law authorities Plaintiff request this motion be granted in the interest of justice.

Respectfully Submitted By
Plaintiff/Claimant/Affiant:

Pro Per	<u>Cesar Mendoza Hernandez</u> Cesar Mendoza-Hernandez	Signed under
In Propria	33674-077	18 U.S.C.
Persona	FCI McKean	\$1623 & under
Proceeding	P.O. Box 8000	28 U.S.C.
Sui Juris	Bradford, Pennsylvania	\$1746.
	16701	

Sec. & Law Enforcement v. Carey, 737 F.2d 187, 192
(2nd Cir.1984);

Decimus Junius Juvenal, originally stated:
"Sed Quis Custodient Ipsos Custodes?"

(But who is to guard the guards themselves?).

Montesquier De L' Esprit Des Lois, 1748:

"There is no more tyranny than which is exercised under
the cover of law, and with the colors of: Justice."
U.S. v. Jannotties, 673 F.2d 578, 614 (3rd Cir.1982).

United States v. U.S. District Court For The Central
District of California, 858 F.2d 534 (9th Cir.1988);

"If the government: (BOP), police & prosecutors, could
always be trusted to do the right thing, there would have
never been a need for the "Bill of Rights."
Ninth Circuit Justice: Leventhal--& his interpretation
on strick criminal liability."

CERTIFICATE OF SERVICE

I, Cesar Mendoza-Hernandez, Pro Per In Propria Persona
Proceeding Sui Juris, hereby certify, that the above
& the following was sent via: United States Mail,
Postage Prepaid, on this 17th day of July, 2005,
to the following:

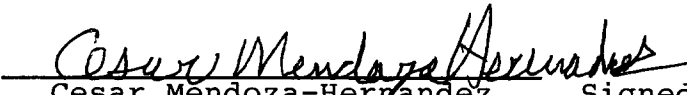
Susan Paradise Baxter
United States Magistrate
Judge, Western District
of Pennsylvania Erie
227 U.S.P.O. & Courthouse
617 State Street
Erie, Pennsylvania
16501

Clerk of Courts
Clerk's Office
U.S. District Court
Western District of
Pennsylvania
P.O. Box 1820
Erie, Pennsylvania
16507

Mary Beth Buchanan
United States Attorney
& AUSA: Lee J. Karl
U.S. Attorneys Office
Western District of
Pennsylvania
700 Grant Street
Suite 400
U.S.P.O. & Courthouse
Pittsburgh, Pennsylvania
15219

An Tran, Esq.,
Federal Bureau of Prisons
Federal Transfer Center
P.O. Box 898802
Oklahoma City, Oklahoma
73189

Pro Per
In Propria
Persona
Proceeding
Sui Juris


Cesar Mendoza-Hernandez
33674-077
FCI McKean
P.O. Box 8000
Bradford, Pennsylvania
16701

Signed under
18 U.S.C.
§1623, & under
28 U.S.C.
§1746.

Cesar Mendoza-Hernandez
33674-077
FCI McKean
P.O. Box 8000
Bradford, Pennsylvania
16701

Clerk of Courts
Clerk's Office
U.S. District Court
Western District of
Pennsylvania
P.O. Box 1820
Erie, Pennsylvania
16507

RE: Cesar Mendoza-Hernandez
V. James F. Sherman,
Warden, FCI McKean.
#04-204E.

Honorable: Baxter
U.S. Magistrate Judge
Western District of PA

Dated: July 17, 2005.

Dear Clerk of Courts,

Enclosed please find a copy of
Plaintiff's Motion/Affidavit via: FRCP 56(f), in opposition
to defendant: Sherman's Motion to Dismiss or in the
alternative for summary judgment via: FRCP 56.

Sent to Judge: Baxter, Clerk of Courts, AUSA: Karl,
& Ms. Tran, Esq., via U.S. Mail, Postage Prepaid on
17th day of July, 2005.

If you have any questions or concerns please do not
hesitate to contact me. Enclosed is also an extra
copy I request to be stamped & docketed & sent back
to me for my record. Much thanks.

Respectfully Submitted By

Pro Per
In Propria
Persona
Proceeding
Sui Juris

Cesar Mendoza-Hernandez
Cesar Mendoza-Hernandez
33674-077
FCI McKean
P.O. Box 8000
Bradford, Pennsylvania
16701

Signed under
18 U.S.C.
§1623 & under
28 U.S.C.
§1746.

"Legal Mail-Special Mail"

"Certified Mail Return Receipt #7004-2890-0004-5923-8539"